1945 **File No.** O.B.R.T./45

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Legal DEPARTMENT
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Subject:— Opinions under the Bombay Revenue Tribunal Act.

(P 129/E)

File No. O.B.R.T./45

Std. Sectt. Slip 24 B e.

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Sd
24.2.56

S.C.-375.

NB
7/6

No. Ppr.s/77/1945,
Matheran, 7th June 1945.

From

K.B.Wassoodew Esq.,
President,
Bombay Revenue Tribunal.

To

The Remembrancer of Legal Affairs
and Secretary to Government,
Legal Department.

Subject.-Lands Bombay Suburban Dist.
S.S.III of Chembur-Anik and
Wadhvli, unauthorised
quarrying in-

Sir,

I have the honour to forward herewith the opinion of the Commissioner, N.D. and Member Bombay Revenue Tribunal, No.L.N.D.B.R.T.17. dated 22nd May 1945, in the matter of the appeal before the Bombay Revenue Tribunal by Messrs Rajastan Construction Co. Ltd. against the order No.L. .D.8931, dated 14th September 1944. of the Collector of the Bombay Suburban District levying non-agricultural assessment and fine under section 61 of the Land Revenue Code for unauthorised use of certain unassessed Government lands and ordering the appellants to pay the value of the material removed by them and to request the favour of your giving your opinion onthe question raised by the Commissioner Member in paragraph 2 of this opinion. below the note of his office. File No.I.N.D. 5564, containing your previous opinion, referred to by the Commissioner, also accompanies. The record and proceedings of the appeal have been sent to the Secretary to - Government, Revenue Department, under this office No. Ppr.s/77/45, dated 7th June 1945. and may be - obtained form him, if required

Your obedient servant,

K.B. Wassoodew
President,
Bombay Revenue Tribunal.

Accompaniments: Commissioner's opinion.
File No. L.N.D. 5564.

"True Copy - Original papers being
of bad quality - Destroyed."

Welankar

Superintendent,

D branch, Legal Department.

S.C.
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Office of the R. L. A.

The lands in this case are unoccupied and unassessed Government lands. Section 61 of the Land Revenue Code Provides for the imposition of penalities for the unauthorised occupation and use of such lands but makes no provision for the unauthorised removal therefrom of natural products like trees, stones etc. The question is whether the value of such material can be recovered under any other provision of the Code or the Rules thereunder. In other words can such value be recovered in the ordinary manner as an arrear or land revenue ?

Section 43 of the Code which has been referred to the R.D. provides that any person who shall unauthorisedly fell and appropriate any tree of any portion thereof or remove from the holding any other natural product whether of the like description or not which is the property of Government shall be liable to Government for the value thereof, which shall be recovered from him as an arrear of land revenue. The words "whether of the like description or not" were inserted by Bombay Act IV of 1905 to make it clear that the section refers not only to natural products ejusdem generis with trees but also to stones etc. In his opinion No. 1384, dated 21st February 1944, the R.L.A. has held upon a true construction of section 43, that it deals with two separate operations viz. (1) unauthorised felling and appropriation of any tree or any portion thereof which is the property of Government (in occupied or unoccupied land) and (2) unauthorised removal of any other natural product, which is the property of Government, <u>from occupied</u> land. Section 43 cannot therefore be applied in the case of unauthorised removal of stones etc. from unoccupied land. The only otherrelevant provisions are Rules 66 to 70 and 133 of the land Revenue Rules. Rule 66 empowers the Collector at his descretion to sell by public auction, or otherwise dispose of, the right to remove earth, stone etc. or any other material which is the property of Government but subject to the privileges conceded by rules 67, to 70 inclusive. Under Rule 67 any person may, with the previous permission of the revenue for his domestic or agricultural purposes earth, ston- etc.

from unassessed waste land within the limits of the village in which he resides or in which the land for the benifit of which the materials are required is situated. Rule 68 makes a a similar provision for the purpose of building a well. Rule 69 and contains limitation of the privilleges conferred by Rules 67 and 68 and Rule 70 gives a further concession for removal of such material from village tanks. Finally, Rule 133 makes a person liable on conviction efore a Magistrate to imprisonment and fine for breaches of any of the Rules 67 to 70/ There is thus no provision for recovering as an arrear of land revenue, the value of such material removed unauthorisedly from unoccupied Government land. The view taken in paragraph 4 of the R.D. office note is not correct. The Tribunal's decision relied on in that paragraph has been considered by the R.L.A. in the opinion cited above. That decision related only to the value of trees unauthorisedly cut in unoccupied land. It is not an authority for the view that the value of other natural product unauthorisedly removed from unoccupied land can be recovered under section 43.

Section 43 has therefore no application . The only other alternative is to prosecute the appellants and/or file a civil suit against them for the recovery of the material removed. Having regard to the fact that the appellants were Government ~~constructors~~ Contractors and that the quarring was done in execution of work connected with war, it will be for the administrative department to decide whether or not to proceed against the appellants in either way. The accompanying written statement ~~x~~ may be filed before the Tribunal.

Id/- P N M 9-1-46

Remembrancer of Legal Affairs.

U.R. to R. D. No. 229 , dated the 10th January 1946.

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The following is the written statement on behalf of the respondant (Collector, Bombay Suburban District).

1. The x respondant does not admit the appellants' contentions in the petition of appeal. There is ~~xxxx~~ ample material on record to show that the appellants themselves were responsible for quarrying the stones etc. from the land in question. The respondant denies the appellants' allegation that they were not concerned in quarrying, excavating or stacking of material on the lands. The appellants are therefore liable to payment of non-agri cultural assessment and fine under section 61 of the Land Revenue Code.

2. The respondant however concedes, having regard to the fact that the lands are unoccupied and un-assessed, that the non-agricultural assessment and fine should be levied only on the area actually used by the appellants, under section 61 clause 3 of the land Revenue Code.

3. The respondants also concede that since the stones were unauthorisedly removed by the appellants form these lands, the value thereof cannot be recovered as an arrear of land revenue under section 43 or any other provision of the land Revenue Code or the Rules thereunder and that the Collector's order must therefore be revised accordingly.

S.C.
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No.690

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 25th January 1946.

From

P.N.Mees, Esquire, Bar-at-law, I.C.S.
Remembrancer of Legal Affairs.

To

The President,
The Bombay Revenue Tribunal.

Subject.- Inam lands : Dharwar.
Kunkur, taluka Shiggaon,
forfeiture of at, and restoration
to the Inamdar under rule 123(d)
of the L.R.Rules.

Sir

With reference to your letter No. Pprs/112/1945, dated the 25th September 1945, on the subject noted above, I have the honour to forward herewith my opinion in the matter.

The papers of the case accompanying your letter under reference are returned herewith.

Your obedient servant.

Sd/

Remembrancer of Legal Affairs.

Subd. after issue
File in O.B.R.T./46

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Office of the R. L. A.

Kunkur is an inam village in the talukaa of Shiggaon in the Dharwar District, Rangrao Baburao Deshpande is the Inamdar of the village and Ramchandra Baburao Kulkarni the sole representative watandar Kulkarni. The Kulkarni watan is a Kadim inam. The watan lands comprised the following survey numbers 14,23, & 41,42, 43, 44, and 153, 156. The lands are assigned for the remuneration of the officiator; and are subject to two liabilities:(1) the liability to pay kadim judi of Rs.100/- to the Inamdar and (2) the liability to pay potgi of the officiating Kulkarni.

Ramchandra Baburao had two brothers, Hanmant Baburao and Venkatesh Baburao. The brothers divided the lands in 1947 whereafter they were entered separately in their names in the Record of Rights. Venkatesh died inabout August 1940. Survey Nos. 14,41/3 and 153/2 stood in Venkatesha's name in the Record of Rights. It is claimed that Vankatesha's name in the Record of Rights was in possession of also Survey No.44 although it stood in the name of Ramchandra. In respect of the kadim inam judi the Inamdar Rangrao obtained every year from 1927-28 onwards decrees for assistance under sections 86-87 of the Land Revenue Code against Ramchandra Baburao and/ or the lessess of the lands who had undertaken in their respective lesse to pay thejudi. Execution of the decrees was tried agains movable property, but nothing could be recovered. Notices of forfeiture of all the Kulkarniki lands were hence issued to Ramchandra Baburao, his two-cosharer brothers and other persons concerned and they were duly served and published. The notice to Venkatesh was served onhim on 28th June 1939. On 29th June 1939 he made an application to the Mamlatdar for granting time to pay his share of the judi. On 3rd March 1941 the Assistant Collector passed an order forfeiting all the watan lands and transferring them under rule 123(d) of the land Revenue Rules to the Inamdar Rangrao on his executing a bond undertaking to pay thepotgi

S.C.

.ne officiating Kulkarni. In the meantime Venkatesh was dead. H..s son Dattaraya appealed to the Collector but the Collector dismissed his appeal on 18th November 1943, observing: Appellant's father was a party to the Assistance suit decree passed on 24th April 1939, wherein he was defendant No.4. The forfeiture notice was served on him on 27/5/1939 and after 15 days the land would stand forfeited. The contention of the appellant that at the time when the declaration of foreiture was made his father was dead and the appellant was the holder of the land is not tenable as the delay in the declaration of the forfeiture would not affect the disposal of the land (vide 21 Bom. 381 Ganpati Vs. Gangaram). The lands being assigned lands the potgi and the kadim judi payable to the Inamdar are primary charges on the lands themselves. The appellant does not maintain that he has paid either of the dues nor is he the officiateer. The order of the Assistant Collector is in consonance with rule 121(d)".

2. Dattatraya has now appealed to the Bombay Revenue Tribunal challenging the validity of the Order of forfeiture. The President of the Revenue Tribunal has requested the R.L.A. to advise whether or not all the contentions of the appellant are valid.

3. The appellant's contentions may be briefly stated as follows,- (1) judi is not land revenue and therefore not leviable under the provisions of the land Revenue Code.

(2) Venkatesh as co-sharer was separately in possession of S. Nos . 14,41/3, 153/2 and 44. He was not a party to the assistance decrees except that for 1937-38 inwhich the balance was Rs. 20/- only.

(3) The watan was forfeited for a total amount of Rs. 521/11/8 due under the decrees, but the notice served on Venkatesh showed that he was to pay Rs. 24/2/- only and it was not stated how this amount was arrived at.

(4) Notice of forfeiture was not affixed to the dwelling house of the defaulter as required by section 166 of the Land Revenue Code.

(5) Venkatesh had only a life interest in the watan.

S.C
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The appellant's interests in the lands could not be forfeited for money due under the decrees from Venkatesh. No fresh notice of forfeiture was served on the appellant after the death of Venkatesh. The order of forfeiture is not binding on appellant.

(6) Assuming that there was proper notice of forfeiture, there was yet no notice given by the Assistant Collector of the action taken by him under rule 123(d) of the Land Revenue Rules.

These contentions may be considered seriatum

3. Contention No. (1) : It is true that G.R.s. 8528 of 8/10/23 and 15/8/24 show that judi payable under the Gordon Settlement Sanads is not recoverable under section 187 of the Land Revenue Code. Those G.R.s. are based on the opinion of the R.L.A. and the Advocate General that the judi charged by these sanads was a contractual liability which in the absence of any specific provision would not be leviable as an arrear of land revenue under the Land Revenue Code. It is apparent that the liability under a Gordon Settlement Sanad can be distinguished from the liability arising otherwise then by any contract. The Kadim judi levied on the watan lands in the present case does not arise out of any contractual liability. Consequently these G.R.s. will have no application to the present case. Kadim judi is in the nature of quit-rent within the meaning of section 1087 of the land Revenue Code and recoverable as an arrear of land revenue on a degree being obtained by the Inamdar under section 87 of the Land Revenue Code, 1879 (see section 86).

4. Contentions (2) and (3): Section 86 of the Bombay Land Revenue Code provides that superior holders shall upon written application to the Collector, be entitled to assistance, by the use of precautionary and other measures, for the recovery of rent or land revenue payable to them by inferior holders, or by co-sharers in their holdings under the same rules, except that contained in section 137, and in the same manner as prescribed in Chapter XI for the reallzation of land revenue by the Provincial Government. Section 153 in Chapter XI provides that the Collector may declare the occupancy or

alienated holding in respect of which an arrear of land revenue is due, to be forfeited to the Provincial Government, and sell or otherwise dispose of the same under the provisions of sections 56 and 57 and credit the proceeds if any to the defaulter's account.

Since the Inamdar is entitled to assistance under section 86 for the recovery of his dues and on his obtaining an assistnace decree his dues can be recovered as an arrear of land revenue under section 187 section 153 applies and the occupancy or alienated holding in respect of which he has obtained assistance can be forfeited. Chapter XVII of the Bombay Land Revenue Rules, 1921, relates to the disposal of the forfeited land, Rule 121 in that Chapter provided where the land in respect of which an arrear is due consists of two or more survey numbers or of two or more sub-divisions of survey numbers or of two or more estates separately assessed and the Collector is of opinion that the whole amount of such arrear could be realised by the sale of sless than all of such survey numbers, portion or estates he shall restrict forfeiture to such one or more survey numbers or the sub-divisions as prove sufficient to realise the arrears. Clause (a) of rule 123 laysdown that in the case of an inferior holding forfeited on account of an arrear of rent or land revenue due to a superior holders for the recovery of which assistence is being rendered under section, 86 and 87, the Collector may in his discretion transfer the holding to the superior holder thereof, subject to such tenures, rights, incumbrances or aquities (if any) as he may direct under section 56. The question for consideration is whether these provisions have been complied with in the present case.

Regarding the forfeiture of the Watan as a whole.-

It is no doubt true that all the Kulkarniki lands stand in the name of Ramchandra, the officiator, in the Inam Register and the sdim judi not being apportioned between the sharers the liability to pay that judi is annexed to all the lands. But the lands have been divided between the brothers and are separately entered in the Record of rights evidently to the

knowledge of the Inamdar. The Inamdar appears to have recovered the judi from the brothers separately and in one case he had made Venkatesh a party to the assistance suit. In view of these circumstances it is doubtful whether Venkatesh alone should be held primarily liable for the payment of the whole kadim judi. But that point does not appear to be quite material for the purposes of this appeal. It is undisputed that the assessment of all these lands is more than Rs 100.- and approximately the value would be more than Rs. 2,000.- on the basis of 20 times the assessment as valuation. The Assistant Collector who forfeited the lands appears to have entirely lost sight of rule 121 of the Bombay Land Revenue Rule, he has not considered at all whether it was quite essential to forfeit all these lands to realise the arrears due from Ramchandra admittedly those arrears did not exceed Rs. 525/- , That being so, obviously the forfeiture of all the lands could not be supported. The proper order the Assistant Collector should have passed was to restrict forfeiture to such one or more survey numbers as would prove sufficient to realise the arrears, Ramchandra does not appear to have appealed against the order of forfeiture. However, the Revenue Tribunal exercised all ~~xx~~ the powers which the Provincial Government exercised under section 211 of the Land Revenue Code. (see section 5 of the Bombay Revenue Tribunal Act, 1939). Consequently the Bombay Revenue Tribunal may set aside the order of the Assistant Collector for want of compliance with the provisions of rule 121 of the Bombay ~~Tribunal~~ Land Revenue Rules and direct the Assistant Collector to hold fresh proceedings.

Regarding the forfeiture of Venkatesh's share of the watan.-

The coercive process of forfeiture under section 153 is available only where (1) the judi is land revenue and (ii) assistance for the recovery is granted against an inferior holder under section 86 read with section 87. (Kadim Inam in the present case is presumably partible and the sharers are all inferior holders). Judi is land revenue and assistance is granted specifically against Venkatesh for Rs. 20/- only and against

Ramchandra and the other tenants for tha balance. (out of the total Rs. 521/11/8). In other words notice for the assistance was served on Venkatesh under section 87 only in respect of Rs. 20/- and his share is therefore actually liable only in the respect of Rs. 20/- (though if he were joined in the other assistance suits it would probably have been liable for the balance as well). The appellate order of the Collector recognizes this position and confirms the Assistant Collector's order of forfeiture on the basis of default by Venkatesh in paying up Rs. 20/-. The land forfeited from Venkatesh is over 40 acres in area and bears over Rs.50 as assessment.

Prima facie the order forfeiting the lands standing in the name of Venkatesh is also hit by rule 121 of the Bombay Land Revenue Rules.

Although the point whether all the lands are jointly and severally liable for the payment of Kadim judi is not free from doubt the broad facts are that the brothers have partitioned the lands and have been for years paying their share of Kadim judi separately. Consequently coercive process of forfeiture should in equity be taken against th-e lands in possession of the sharer who has defaulted and against whom assistnace is secured.

5. Contentions Nos. (4), (5) and (8) There is not much force in any of the intended declaration was sent to Venkatesh by post. It is true that section 166 provides that the copy should be affixed to the defaulter's dwelling place, but Venkatesh had no dwelling place in the village and the service on him in person elsewhere would probably be sufficient.

6. The only conditions which require to be fulfilled under section 153 are (a) a proclamation and written notices of the intention to declare forfeiture should be issued as prescribed, and (b) the declaration of forfeiture should not be made till after the expiration of 15 days from the date the notices have been affixed, These conditions have been fulfilled in the present case. It was not legally necessary to issue a fresh notice to the appellant after the death of Venkatesh. The liability for forfeiture which secured

as soon as the conditions laid down in section 153 were fulfilled could not be defeated by the death of Venkatesh before the order could be actually made. The liability continued for all the persons who had a present or contingent interest in the lands and the argument based on life interest is inapplicable in this case.

After forfeiture the lands were at the disposal of the Collector, and neither section 51 nor rule 123(d) required him to give a notice to the previous Khatddars before transferring the lands to the Inamdars.

Sd. P.N.Mees

Remembrancer of Legal Affairs.

S.C.
4 Copies 10-5-

55/15

88 Napean Sea Road
No. Pprs/77/1945,
Bombay, 9th February 1946

Sir Navroji Wadia
P r e s i d e n t ,
Bombay Revenue Tribunal.

The Remembrancer of Legal Affairs.
amd Secretary to Government,
Legal Department

Subject.- Lands : Bombay Sburban Dist.-
S.S.III of Chembur-Anik and
Wadhvli-
Unsubmitted quarrying in -

Sir,

I have the honour to invite your attention to this office No. Pprs/77/1945, dated 7th June 1945, in the matter of the appeal by the Rajastan Construction Co. Ltd. to the Bombay Revenue Tribunal against the order of the Dist. Collector of the Bombay Suburban District, levying non-agricultural - assessment and fine under section 61 of the Land Revenue Code for unauthorised use of certain un-assessed Government lands and ordering the appellant to pay the value of the material removed by them, and to request you to be so good as to send me your opinion in the matter of at an early date. File No.L.N.D. 5564 sent to you by this office along with letter No.Pprs/77/, dated 7th June 1945, referred to above has been received by me from the Secretary to Government, Revenue Department

2. The opinions of the Bombay Members of the Bombay Revenue Tribunal should also kindly be returned to this office along with your opinion.

your obedient servant,

Wadia

President,
Bombay Revenue Tribunal.

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No. 2188

Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 19th March 1945.

To

The President,
Bombay Revenue Tribunal

Subject.- Lands : Bombay Suburban District
S.S.III of Chembur-Anik and
Wadhvli -
Unauthorised quarrying in -

Sir,

With reference to your letter No. Pprs/77/1945, dated the 9th February 1946, on the subject noted above, I have the honour to state that the point has been discussed in Remembrancer of Legal Affair's opinion No.229 dated the 10th January 1946 a copy of which is enclosed herewith. The opinions of the members of the Bombay Revenue Tribunal are also returned herewith.

Your obedient servant,

Sd
For Remembrancer of Legal Affairs

Subd. for signature

As the word "again" in the third line seems unnecessary. If so, it should be deeted.

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No.Pprs/17 /1946,
Bombay, 4th April 1946.
(88 Nepean Sea Road).

From

Sir Mavroji Wadia,
President
Bombay Revenue Tribunal.

To

The Remembrancer of legal Affairs,
and Secretary to Government ,
Legal Department

Subject.- ~~Pl~~ Political Saranjam-
S.No. 24/2 of Poona City-

Sir,

I have the honour to forward herewith the record and proceedings, including the opinions of the Members of the Bombay Revenue Tribunal, in the matter of the appeal by Shrimant Chintamanrao Bhalchandrarao alias Balasahib Patwardhan, Rajesaheb of Kurundwad, and to request you to be so good as give your opinion in the matter at an early date.

Your Obedient servant,

Wadia
President
Bombay Revenue Tribunal.

S.K
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R.I.No. 3181/12-4-46.

Submitted,

This is a reference from the Bombay Revenue Tribunal requesting H.L.A to advise inthe matter, The facts of the case are as follows.-

Shrimant Chintamanrao, Raja of Kurundwad holds a Saranjam, known as Lotan Bag, situated in Sadashiv Peth, Poona. This saranjam has been guaranteed to the Rajas of Kurundwad by a treaty of 1819, entered into with Raghunath Keshav Kurundwadkar by the East India Company. A portion of this Saranjam bearing S.No. 24, Hissa No.2 known as Adam Bag is at present in the possession of one Dr. Hakim. It appears that this S.No was let out in 1856 by the ther Ruling Chief of Kurundwad to one Mr. Tarquin at an annual rent of Rs. 66. Mr Tarquin built a bungalow on the premises and this was purchased by one Dharamsey Punjabhoy in auction in 1861 and in 1917, Dr. Hakim's father appears to have purchased the same. In 1942, the Raja of Kurundwad applied to the Collector of Poona. Contending that the property being a "Polititnl Saranja any transactions made by his ancestors were not binding on him and hence he should be given possession of the property free from a l encumbrances under the Saranjam Rules and that Dr. Hakim should be ordered to remove his Bungalow and outhouses.

2. The Collector thereupon held an inquiry and finding that the Saranjam was a treaty Saranjam to which Saranjam Rules did not apply rejected the application. An application was made to him to review his order which he also rejected.

3. The Raja thereupon preferred an appeal to the Commr. C.. The appeal was rejected. The appellant Raja has now come in appeal before the Bombay Revenue Tribunal.

S.C.

4. From the papers forwarded, it appears that the Commr. C'D is of the view that Tribunal has no jurisdiction to entertain the appeal. The Commr. N.D. is inclined to agree with him but suggests reference to R.L.A. The papers are accordingly referred to R'L.A. for advice - vide pp. 1-6 ante.

5. The points on which opinion is sought are not correctly indicated; but the following two points emerge for consideration.-

(1) whether the Saranjam in question is a treaty Saranjam to which Saranjam Rules do not apply; and whether it cannot be resumed by Govt. in the circumstances stated; and

(2) whether the Bombay Revenue Tribunal has jurisdiction to entertain the present appeal.

It is not clear how and when the Raja-s of Kurundwad came to hold the Saranjam in question and hence its nature before the advent of British is not ascertainable. But possession of the Saranjam appears to have been guaranteed by the terms of the Treaty of 1819 which was entered into by the East India Company with Kesow Rao Baba Patwardhan in 1819. (vide treaty at pp. 262-264 of Vol. VII of Aitchinson's Treaties). Article 6 of that treaty provides that "as long as you continue to serve the British Govt. with fidelity and attachment, your Jagnir shall that remain unquestioned and undisturbed in your possession and that of the Birdars of your family. By Article 7, it has been guaranteed "that any villages, lands or other possessions belonging to your Saranjam or inam situated with the lands of Govt. shall be continued without obstruction as they have heretofore been continued". Article 7, it appears, is the appropriate article under which it can be said that the present land in Poona City have been continued to the Rajas of

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No. 4536

Office of the
Remembrancer of Legal Affairs.
18, Queens Gardens, Poona.
20th June 1946.

From

P.N.Moos, Esquire, C.I.E., I.C.S.
Remembrancer of Legal Affairs.

To

The President,
Bombay Revenue Tribunal,
Bombay.

Subject.- Political Saranjam -
S.No. 24/2 of Poona City

With reference to your letter No. Pprs/17/1946, dated the 4th April 1946, I have the honour to forward herewith my opinion in the above matter..

2. The papers accompanying your letter are returned herewith.

Sd/ 21-6-46

Remembrancer of Legal Affairs.

S .C.
4 C. 10-5-

Office of the R.L.A.

The question whether the present saranjam is treaty saranjam to which the Saranjam Rules do not apply and whether Government can resume the alienated part of the saranjam and regrant it is the saranjamdar would be material for purposes of the appeal only if the Revenue Tribunal has jurisdiction to entertain in.

2. The appellant has, in effect, asked the Tribunal to resume the land and regrant it to him on the ground that it is part of the Saranjam to which he is entitled. In approaching the Tribunal with this prayer, the appellant has already misconceived his remedy. It is exclusively within the province of Government to decide whether to resume the land and regrant it to the appellant. It is not for the Tribunal to decide this question. In fact, the Tribunal would be acting without jurisdiction in ordering restoration of possession to the appellant. It does not therefore appear necessary to consider the other questions raised by the Commissioner, Northern Division in his endorsement at page 5 ante.

Sd/- 21-6-46

Remembrancer of Legal Affairs.

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Office of the R.L.A.

In the appeal before the Tribunal the question for consideration is whether the original grant to the Jividar is a grant of the land itself, or merely of the land revenue, and in his opinion No. 4358 dated the 8th June 1945, R.L.A. has advised the Tribunal that the grant to the Jividars is of the land itself which could be resumed under the Resumption Rules. Government has, however, requested R.L.A. to reconsider his opinion and the case was referred to him for this purpose on 22nd July 1946.

In several Civil Suits pending in the Civil Court, Ahmedabad similar question has arisen. In connection with these suits, the Collector of Ahmedabad was requested by the Legal Department on the 6th May 1946 to supply certain information concerning the lands held by the Jividars and a fund called the Jividar's fund. On the 13th August 1946 the Collector supplied this information and in his reply he referred to G.O.R.D. No. 122/16 (confidential) dated the 16th January 1920 which had come bearing on the lands assigned for Jividar's service. R.D. was hence requested on the 16th August 1946 to forward to this Department the file containing the Government order referred to by the Collector. That file has been made available to L.D. only on 6th September 1946.

There has thus been very little time at the disposal of this Office and the case being difficult and requiring careful and detailed study it would not be possible to return the papers by the first week of September ~~mm~~ which has nearly expired. R.D. is therefor requested to get the appeal adjourned to the next session of the Tribunal/

SD/

For Remembrancer of Legal Affairs.

U.R. to R.D. No. 6155 dated 10th September 1946.

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No. 2442-B/45.

Revenue Department.

Bombay Castle, 20th September 1946.

From

The Under Secretary to the Government of Bombay
Revenue Department.

To

Ramaji Motiji, Esquire,

Subject.-Lands: Ahmedabad
Paldi, City taluka
Claim to certain - by
Jividars. of,

Sir,

With reference to your petition, dated 16th August 1946, I am directed to state that the appeal preferred by Mr. Fakirbhai Sarabhai against the order of the Collector of Ahmedabad, admitting your claim of ownership over, S.No. 142 of Paldi, City taluka, has been set down for hearing by the Bombay Revenue Tribunal during its October 1946 session. But it is not possible to completely prepare the Government case for the ensuing session. Government is therefore requesting the Tribunal to postpone ~~next ix therefore~~ the hearing of the case to its next session, to be held in March 1947. If you desire to represent your side before the Tribunal at the hearing of ~~x~~ the appeal in March 1947, you may inform the President, Bombay Revenue Tribunal, 46, C, Warden Road, Cumballa Hill, Bombay, accordingly.

Your obedient servant.

S.N. Navalkar.

For Under Secretary to the Government of Bombay,

Revenue Department

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No. 2442-B/45.

Revenue Department,
Bombay Castle, 20th September 1946

Copies forwarded to -

The President, Bombay Revenue Tribunal (with reference to the correspondence ending with his letter No. Pprs. 37/1946, dated 12th June 1946.

The Remembrancer of Legal Affairs (with reference to his memorandum, No. 6155, dated 10th September 1946).

2. As the Government case in respect of the appeal petition, preferred by Mr. Fakirbhai Surabhai of Naldi, City taluka, district Ahmedabad, will not be ready for hearing before the Bombay Revenue Tribunal during its October 1946 session, the President is, requested to be so good as to post-pone the hearing of the appeal petition in question to the March 1947 session.

By order of the Governor of Bombay.

Under Secretary to the Government of Bombay
Revenue Department.

Legal Deptt.
Subtd for inf.

2 File in O.B.R.T./46

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Office of the R.L.A.

Mr. Motilal Chhaganlal of the village of Acher (District Ahmedabad) has filed an appeal before the Bombay Revenue Tribunal against an order of the Collector of Ahmedabad No. W.T.N. 2050, dated 15-9-1944 confirming the order of the City Deputy Collector No. W.T.N.C.S.R. 447 dated 6-4-1945 declaring that the original grant in the case of S. No. 31 (old S.No. 11) was of the land itself and directing that it should be entered in the name of the officiator Harjiwan Moti.

S.No. 31 is service land held as remuneration for the service of the barbers (village servants useful to the community). On 22-7-1941 the Revenue Patel of Acher reported to the City Mahalkari, Ahmedabad that the land assigned for barber's service in the village was misused and enjoyed by persons other than those who rendered service and that the village was without the service of the barber. On receipt o f this report an inquiry was started and on 6-4-1943 the City Deputy Collector decided that in the absence of any evidence that land revenue was alienated, it must be presumed that the grant was of the soil itself and he accordingly directed that S.N.o. 31 should be entered in the name of the officiator Harjiwan Moti. This order was upheld by the Collector on 15-9-1944 in appeal filed by the appellant. The appellant has therefore preferred this further appeal to the Bombay Revenue Tribunal. The President of the Tribunal has requested Government to put in a written statement showing why the appeal should not be allowed and the order of the collector set aside. The Commissioner Northern Division is of opinion that there is no

documentary evidence on behalf of Government to show that the original grant was of the soil itself and he recommends that the Collector's order may be set aside and the appeal allowed. The Remembrancer of Legal Affairs, has been requested to advise whether the appeal is defensible and if so the forward a ~~wrxi~~ written statement for filing before the Tribunal.

The principle contention of the appellant is that the land in dispute is of the absolute ownership of himself and his ancestors and that what was alienated in lieu of barber's service was only the land revenue. In support of this plea he relied mainly upon the entries in the Government Reords including the Land Alienation Register and other Record of Rights. The previous history of this land has been given by the Commissioner, Northern Division in his opinion at pages 7-9 ante.

The view taken by the Commissioner, Northern Division appears to be correct. From the extract from the alienation register it appears that a Sanad was granted in respect of the land in Form 11 (vide No.11 in Appendix F of Joglekar's Alienation Manual, page 325). That Sanad recites that the land described therein~~xxxx~~ would be ~~continued~~ continued rent free during the pleasure of the British Government as remuneration for the performance of the service of ..... to the village community of ..... . The original San ad is not on record but the terms on ~~what~~ which the land was continued and the nature of the alienation can be gathered from the Alienation Register. The assessment of the land was Rs. 8-0-0. From columns 17 to 20 it appears that judi or Quit Rent of 4 annas in the rupee was levied under the Sanad and the balance of Rs. 6-0-0 was alienated as Nuksan. This balance was, ac ording to the last

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column in the table of the Sanad, continuable subject to service. It is therefore clear that what was alienated was not the land itself but its revenue and that the occupant was to enjoy the exemption from land revenue so long as he rendered service tothe village. On cessation of service or on the passing of the land into the hands of persons other than the actual officiator, Government can resume nothing more than what was granted viz. the land revenue. Moreover no resumption can be made of lands appertaining to the office of a village servant of the description mentioned in Act XI of 1852 schedule B, rulal, para 1 even though the office is found to be dissociated from the lands (see ~~appeal would not therefore be defensible .~~ The Phadnis's Inams and Saranjams page 90) The appeal would not therefore be defensible. The view taken by the Commissioner, Northern Division may be accepted.

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Remembrancer of Legal Affairs

U.R. to R.D. Nos 211 , dated the 8th January 1947.

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Office of the R.L.A.

On further consideration in the light of fresh materials placed before the R.L.A. it appears that the view taken by the Secretary, R.D. and H.M. (R.D.) is correct.

In his letter No. 1159 dated 1st May 1899 the Collector of Ahmedabad has observed;

"The land-holding jividar is and has been for generation part of the village institutions, the ownership of land has in all times and places been to some extent a badge of, and a security for, respectable behaviour."

It is therefore clear that there are some jividars who own lands and to whom exemption from payment of land revenue was allowed in return for services rendered. Consequently without laying down any general proposition that because jividars belong to a poor class any grant to them of land for service must presumably be one of land itself and not of revenue, each case has to be considered on its own facts, the main question being whether the lands were assigned to the jividar family for the services to be rendered or whether the lands being in possession of the Jividar's family exemption from payment of land revenue was allowed in return for services to be rendered.

Grant of land may consist of the soil itself or of the royal share of the revenue derived from it. Lands held for service were excluded from the settlement under Act VII of 1863 which applies to Gujarat and are governed by the Rules of Resumption. There being no sanads issued to the grantees of service lands, the Land Alienation Register maintained under section 53 of the Land Revenue Code, 1879 has evidentiary value. In column 20 of the Alienation Register in respect of the service land in the present case it is clearly stated "Rs. 13-0-0 land revenue alienated or granted exemption form payment of land revenue". It is admitted that Government has no evidence to prove that what was granted in the present case was of land itself and not revenue. Further the earliest documents on record are the survey Tippan of 1854 and the Prat-Book of 1887.

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The granted is described as Maldhani" in these documents. The expression " Malik" is interpreted in Lakhaj Dalji v. Auberdas Hargovindas (46Bombay L.R. 378) as "owner of land" "Maldhani" appears to be an expression still stronger than "Malik" Consequently the grantee in the present case appears to be an owner of land. The other expression found in the Survey Tippan is "Chakari Nakru" which obviously means "for service free of tax or land reenue". These documents read with the Alienation Register appear to prove that the land being already in possession of the grantee, exemption from payment of the land revenue was allowed in return for services to be rendered. There appears therefore no objection to treating the grant in the present case as one of land revenue only.

It appears that several suits are pending where a similar question is involved. As observed above, every case has to be decided on its own facts and consequently the decision in the present case should not be treated as a precedent governing all jividar-grants. Government Resolution (Revenue Department) No. 2496 dated the 3rd May 1930, which deals with the alienation of lands of village servants useful to Community has no application to jividar-grants. The decision in Bhavan v. Secretary of State (45 Bom. 894) does notappear to be also in point.

Sd/-

Remembrancer of Legal Affairs.

U.R. to R.D.No. 764 dated the 21st January 1947.